IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

WP(C).No. 31021 of 2005(R)

PETITIONER:

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1. E.K.ABDUL KHADER,
   S/O.IBRAHIM, KARIPPOTTAYIL HOUSE,
   PUNNAYOOR, KUNNAMKULAM,
   THRISSUR DISTRICT.

2. K.T.KUNJIMOHAMMED,
   S/O.BAPPU, KARIPPOTTAYIL HOUSE,
   PUNNAYOOR, KUNNAMKULAM,
   THRISSUR DISTRICT.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.P.K.VIJAYAMOHANAN

RESPONDENTS:

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1. THE DISTRICT COLLECTOR,
   THRISSUR.

2. THE SPECIAL TAHSILDAR,
   LAND ACQUISITION (GENERAL),
   THRISSUR.

3. THE EXECUTIVE ENGINEER,
   KERALA STATE TRANSPORT PROJECT,
   STATE HIGHWAY DEPARTMENT,
   KUTTIPPURAM.

4. SRI.JOBI @ IGNATIOUS,
   CHUNKATH HOUSE,
   KOTTAPPADY,
   CHAVAKKAD.

5. SRI. ALEXANDER,
   CHUNKATH HOUSE,
   KOTTAPPADY,
   CHAVAKKAD.

6. MR. PHAMIGJI,
MANAGER, ROAD BUILDER M (RBM),
KUNNAMKULAM.

BY FOR R1 TO R3, GOVERNMENT PLEADER,
SRI MUHAMMED PUZHAKKARA
FOR R4 AND R5, ADV. SRI.V.GIRI
FOR R6, SRI.SANTHEEP ANKARATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXTS:-

EXT.P1 TRUE COPY OF THE ORDER OF THE RENT CONTROL APPELLATE AUTHORITY IN R.C.NO.76/1990, DATED 16/06/1997

EXT.P2 TRUE COPY OF THE RENT CONTROL PETITION NO.88/00 FILED BY THE RESPONDENTS 4 AND 5 DATED 18/12/2000

EXT.P3 TRUE COPY OF THE PLAN SUBMITTED BY THE COMMISSIONER

EXT.P4 TRUE COPY OF THE NOTICE DATED 03/01/2005 ISSUED BY THE 2ND RESPONDENT

EXT.P5 TRUE COPY OF THE REPRESENTATION DATED 28/10/2005 SUBMITTED BY THE PETITIONERS ALONG WITH THE WORKERS OF THE HOTEL FILED BEFORE THE DISTRICT COLLECTOR

RESPONDENTS' EXTS:-

EXT.R4(a) TRUE COPY OF THE OPTION EXERCISED BY THE RESPONDENTS 4 AND 5 VIDE COMMUNICATION DATED 18/11/2004

EXT.R4(b) TRUE COPY OF THE NOTICE UNDER RULE 12(2) OF THE LAND ACQUISITION ACT DATED 01/02/2005

EXT.R4(c) TRUE COPY OF THE WARRANT DATED 27/04/2005

\\TRUE COPY//

J.M.JAMES, J.

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W.P.(C) No.31021 of 2005 (R)

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Dated this the 12th day of April, 2007

J U D G M E N T

Upon instructions, the Government Pleader submitted that the land extending to 0.0035 hectares, comprised in Survey No.76/38 of Kunnamkulam village, shall alone be acquired by the Land Acquisition Officer, as notified, and the portion of the building that comes within this extent of the land, shall alone need be demolished. The Government Pleader also further submitted that no application under section 49 of the Land Acquisition Act, in short 'the Act', had been received by respondents 1 and 2.

2. In view of the above facts situation, I have disposed of the writ petition itself accepting the prayer of the writ petitioners-tenants-to limit the demolition of the building only to the extent necessary for widening of the road and there is no need for any further consideration or passing of the orders on the matter.

3. However, the learned counsel appearing for respondents 4 and 5, the landlords of the building submitted, relying on Exhibit R4(a), that they have already filed an application under Section 49 of the Act on 18/11/2004, through the Executive Engineer K.S.T.P Division, Kuttippuram, and therefore, the submission of the Government Pleader requires further clarification. Hence, I posted the matter for further hearing.

4. Even during the pendency of this matter from 22/11/2005, till to day, respondents 4 and 5 could not establish before me that any application under Section 49 of the Act had been preferred as required, before either respondent No.1 or respondent No.2. However, even now, the counsel for respondents 4 and 5 insist that they will be able to bring the application filed before the Executive Engineer, to the attention of respondents 1 and 2, and, therefore, the same may be directed to be considered by the second respondent.

5. The counsel for the writ petitioners further submits that the period within which an application under

Section 49 of the Act has to be filed is, at any time before the Collector has made his award under Section 11 of the Act. I am not entering into any discussion as that matter is not the question to be considered in this writ petition. However, a perusal of Exhibit R4(a) shows that a petition had been filed under Section 47 of the Act and not under Section 49 of the Act.

6. I have further directed the Government Pleader to verify whether any application, under Section 49 of the Act, had been filed at any time before respondents 1 and 2, by respondents 4 and 5. It is reiterated by the Government Pleader that no such application had ever been filed by respondents 4 and 5, under Section 49 of the Act.

7. In the light of the above discussions and the stand of respondents 1 and 2 that they shall limit the demolition of the building only to the extent of acquisition already made, for the purpose of widening of the road, no further orders are necessary in the writ petition.

8. However, I make it clear that this judgment will not affect the right, if any, available to respondents 4 and 5, as

per the provisions of the Land Acquisition Act, to raise their legal contentions.

The writ petition is accordingly, closed.

(J.M.JAMES)
Judge

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